



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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March 23, 2023

**FILED VIA SDNY ECF**

Hon. Vernon S. Broderick  
United States District Judge  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

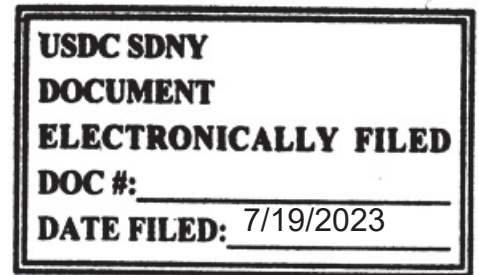
Re: Fair Housing Justice Center, Inc. et al. v. Bassett et al., S.D.N.Y. 18-cv-3196

Dear Judge Broderick:

This office represents Defendants New York State Department of Health ("DOH") and James McDonald in his official capacity as acting Commissioner of DOH (collectively "State Defendants") in the above captioned matter. On March 24, 2023, pursuant to Magistrate Judge Lehrburger's February 9, 2023, Order (ECF No. 351), State Defendants will be filing reply papers in further support of their motion for partial summary judgment. See ECF No. 328. We write in accordance with Rule 5-B of this Court's Individual Rules & Practices in Civil Cases to seek permission to file certain documents under seal. These documents concern investigations into confidential complaints against Adult Care Facilities ("ACFs") and include health information concerning residents at the ACFs.

Under Rule 5-B, "information requiring caution" may be redacted from public court filings without prior Court approval. The "Privacy Policy" referenced in Rule 5-B defines "information requiring caution" to include personally identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, and information regarding cooperation with the government.

Certain exhibits that State Defendants will be filing as exhibits to the Reply Declaration of Erin R. McAlister in further support of State Defendants' motion for partial summary judgment



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contain records that qualify as “information requiring caution” under the Privacy Policy because they concern medical information of residents at ACFs. In addition, the documents contain confidential information that should be filed under seal because they concern investigations conducted by DOH into confidential complaints against ACFs alleging regulatory violations. In addition, certain of the complaints were unsubstantiated. Because these records are relevant and necessary to State Defendants’ reply in further support of their motion for partial summary judgment, State Defendants request permission to file those records under seal.

Those records consist of the following exhibits, which are being filed concurrently with this letter motion:

| <b>McAlister<br/>Reply Exhibit<br/>No.</b> | <b>Description of McAlister Reply Declaration Exhibit</b>                                                                             |
|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| 5                                          | The ACTS Complaint/Incident Investigation Report concerning an ACF, Fawn Ridge Senior Living, Bates stamped State Defs 00051045-48.   |
| 7                                          | ACTS Complaint/Incident Investigation Report concerning an ACF, Promenade at Middleton, Bates stamped State Defs 00055571-75.         |
| 9                                          | The ACTS Complaint/Incident Investigation Report concerning an ACF, The Bristol, Bates stamped State Defs 00051549-51.                |
| 10                                         | The ACTS Complaint/Incident Investigation Report concerning an ACF, Promenade at Middleton, Bates stamped State Defs 00051194-98.     |
| 11                                         | The ACTS Complaint/Incident Investigation Report concerning an ACF, Mohegan Park, Bates stamped State Defs 00055433-36.               |
| 12                                         | The ACTS Complaint/Incident Investigation Report concerning an ACF, Brandywine Assisted Living, Bates stamped State Defs 00050802-06. |
| 14                                         | The ACTS Complaint/Incident Investigation Report concerning an ACF, Brightview Tarrytown, Bates stamped State Defs 00055416-17.       |

Plaintiffs’ counsel have consented to the filing under seal that State Defendants are requesting.

Respectfully submitted,



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cc: All counsel of record (via ECF)

Granted.

SO ORDERED:

7/19/2023



HON. ROBERT W. LEHRBURGER  
UNITED STATES MAGISTRATE JUDGE